

## **REMARKS**

The present Amendment is in response to the Examiner's Office Action mailed April 22, 2009. Claim 14 is amended and claims 5-10 are canceled. Claims 1-4 and 11-20 are now pending in view of the above amendments.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

### **I. Interview Summary**

On March 20, 2009, Applicants attorney conducted a telephone interview with the examiner. This response incorporates the substance of the interview. The Examiner indicated that the claims appeared to distinguish over the art of record. However, the Examiner indicated that further analysis and search would be required before the claims could be allowed.

### **II. Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 1-6, 11-13, and 17-20 under 35 U.S.C. § 103(a) in view of *Proehl* (U.S. Publication No. 2003/0131356) and *Harrison* (U.S. 5,878,222). Applicant respectfully traverses the rejection inasmuch as *Proehl* and *Harrison*, whether alone or in combination, fail to teach or suggest each and every element of the claim.

*Proehl* teaches a system in which a broadcast signal includes advertisements broadcast concurrently with a "program identification... that is used to reference into a database of program information." Paragraph 31. As the program identification is broadcast, a "user may simply depress a particular button on [a] remote to indicate interest in the advertised program."

Paragraph 33. Upon receiving the interest signal “the program information is retrieved and an entry is put in [a] system calendar to remind the user of the occurrence of the broadcast or the program.” When the time and date contained in the program information arrive “a reminder message is displayed” so that the user can choose to view or record the program. Paragraph 36.

*Harrison* teaches a system in which “a snap shot of a video image (i.e., one or more frames) is taken.... [T]he snap shot is analyzed to determine whether it matches a predetermined match criteria (i.e., as input by the user and stored in the profile unit).” Col. 6, lns. 33-38. If a match is detected, then an analyzing unit “preempts any channel currently being displayed in [a] display unit” and switches to the channel on which the match criteria was detected. Col. 5, lns. 11-34.

In contrast, claim 1 recites, in combination with other elements, “receiving a first broadcast television program with the receiver, the first broadcast television program being received on a first channel during a first time period; receiving a commercial corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period; receiving the ID code with the receiver, the ID code being received on the first channel during the second time period; if a user instruction is received during the second time period, activating the receiver during the second time period to extract and store the ID code; and automatically tuning the receiver to a second channel after the first period if the stored ID code is detected on the second channel.”

The system of *Proehl* does nothing more than store program information responsive to the user pressing a button during a commercial for a program and remind the user to change the channel based exclusively on a time and date contained in the program information. The system of *Proehl* therefore does not teach or suggest a system configured to “automatically tun[e] the receiver to a second channel after the first period if the stored ID code is detected on the second channel” as recited in claim 1.

In the system of *Harrison*, the predetermined match criteria are manually entered by the user and are not “extract[ed] and store[d]” “during [a] second time period” based one whether “user instruction is received during the second time period” as recited in claim 1. *Harrison* therefore further fails to teach or suggest “automatically tuning the receiver to a second channel

after the first period if the stored ID code is detected on the second channel,” where the stored ID code is extracted as recited in the claim.

There is further no teaching, suggestion, or other apparent reason to combine *Proehl* and *Harrison* to achieve the claimed invention. *KSR*, 82 USPQ2d at 1396 (Fed. Cir. 2006) (“Rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”). For example, once the program information is extracted in the system of *Proehl*, there is no need for further monitoring of the television channels in order to ensure that the television program is detected. Instead a simple timer or calendar is sufficient. There is therefore no teaching, suggestion, or other apparent reason, to introduce the computational complexity and multi channel tuner of *Harrison* into the system of *Proehl* in order to tune to a selected program inasmuch as it would be very expensive and the desired channel and time are already known.

In a like manner, *Harrison* contains no teaching, suggestion, or any apparent reason, for combination with *Proehl*. The system of *Harrison* is designed to monitor multiple channels and alert a viewer of programs containing match criteria. Inasmuch as this active monitoring is based on real-time evaluation of currently broadcast signals, it is not apparent from either of these references how a system for extracting future scheduling data, such as *Proehl*, could or should be combined with the system of *Harrison*, absent hindsight based on Applicant’s own disclosure.

It is therefore clear that any utility of the combination is only apparent based on Applicant’s own disclosure and that the references themselves contain no reason to combine. A *prima facie* case of obviousness has therefore not been established with respect to these references.

With respect to claim 11, for at least the reasons noted above with respect to claim 1, the cited references fail to render obvious a method including “receiving a commercial corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period; receiving the ID code with the receiver, the ID code being received on the first channel during the second time period; if a user instruction is received during the second time period, activating the receiver during the second time period to extract and store the ID code; monitoring the plurality of television channels following the second time period; and if the ID

code is detected on the plurality of television channels following the second time period, automatically tuning the receiver to a second channel of the plurality of television channels on which the ID code was detected.”

With respect to claim 17, for at least the reasons noted above with respect to claim 1, the cited references fail to render obvious a method including “receiving a commercial corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period; receiving a bait code with the receiver, the bait code being received on the first channel during the second time period; if a user instruction is received during the second time period, activating the receiver during the second time period to store the bait code; decoding the bait code to generate a capture code; and monitoring the plurality of television channels following the second time period; and if the capture code is detected on the plurality of television channels following the second time period, automatically tuning the receiver to a second channel of the plurality of television channels on which the capture code was detected.”

With respect to claim 18, for at least the reasons noted above with respect to claim 1, the cited references fail to render obvious a system including a receiver programmed to “receive a commercial corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period; receive an ID code with the receiver, the ID code being received on the first channel during the second time period; if a user instruction is received during the second time period, activate the receiver during the second time period to extract and store the ID code; and automatically tune to a second channel after the first period if the stored ID code is detected on the second channel.”

With respect to claim 19, for at least the reasons noted above with respect to claim 1, the cited references fail to render obvious a receiver comprising “means for detecting an ID code with the receiver, the ID code being received on the first channel during the second time period; means for activating the receiver during the second time period to extract and store the ID code if a user instruction is received during the second time period; and means for automatically tuning to a second channel after the first period if the stored ID code is detected on the second channel.”

Claims 2-4, 12-13, and 20 are dependent on claims 1, 11, and 19, respectively, and are therefore allowable for at least this reason.

### **III. Rejection Under 35 U.S.C. § 102**

The Examiner rejects claims 14-16 under 35 U.S.C. § 102(e)<sup>1</sup> in view of *Proehl* (U.S. Publication No. 2003/0131356). Applicant respectfully traverses the rejection inasmuch as *Proehl* fails to disclose each and every element of amended claim 14.

In particular, for at least the reasons noted above with respect to claim 1, *Proehl* fails to teach or suggest a method including “receiving a commercial corresponding to a second television program with the receiver, the commercial being received on the first channel during a second time period, the second time period being within the first time period; receiving an ID code with the receiver, the ID code being received on the first channel during the second time period; if a user instruction is received during the second time period, activating the receiver during the second time period to extract and store the ID code; and automatically tuning the receiver to a second channel after the first period if the stored ID code is detected on the second channel.”

Claims 15-16 are dependent on claim 14 and are therefore allowable for at least this reason.

### **CONCLUSION**

In view of the foregoing, Applicant believes the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16; (2) any patent application and reexamination processing fees under 37 CFR § 1.17; and/or (3) any post issuance fees under 37 CFR § 1.20. In addition, if any additional extension of time is required, which has not otherwise

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<sup>1</sup> Because *Proehl* is only a reference under U.S.C. § 102(e), Applicant does not admit that *Proehl* is in fact prior art, but reserves the right to swear behind *Proehl*.

been requested, please consider this a petition therefor and charge any additional fees that may be required to Deposit Account No. 23-3178.

Dated this 22nd day of April, 2009.

Respectfully submitted,

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